

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, :
: 12-CR-445 (DRH) (GRB)
v. :
: July 13, 2012
MERYL CARRION, :
: Central Islip, NY
Defendant. :
:
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR GUILTY PLEA
BEFORE THE HONORABLE GARY R. BROWN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: LORETTA LYNCH, ESQ.
UNITED STATES ATTORNEY
BY: CHRISTOPHER OTT, ESQ.
ASSISTANT U.S. ATTORNEY
271 Cadman Plaza East
Brooklyn, New York 11201

For the Defendant: PATRICK BRODERICK, ESQ.

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Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1 THE CLERK: Calling 12-CR-446, United States
2 of America v. Meryl Carrion.

3 Please state your appearance for the record.

4 MR. OTT: Good morning, your Honor.

5 Christopher Ott on behalf of the United States, joined
6 at counsel table by Special Agent Ronnie Rosada Espinal
7 (ph).

8 THE COURT: Good morning.

9 MR. BRODERICK: Good morning, your Honor.

10 Patrick Broderick appearing for Meryl Carrion, and
11 she's with me here this morning, your Honor. Thank you
12 very much for taking us right now. We really
13 appreciate it.

14 THE COURT: No problem. Very good, thank
15 you. First of all, have we done a consent to plea
16 before a magistrate?

17 This matter has been referred to me by Judge
18 Hurley. Understand you have the right to take the plea
19 in front of Judge Hurley if you prefer. He's asked for
20 convenience purposes for me to take it.

21 Is there any objection to proceeding today
22 here?

23 MR. BRODERICK: No, your Honor, none at all.

24 THE COURT: I'll sign the order of referral
25 consent and mark it in the record.

1 The first thing we have to do, Ms. -- it's
2 Carrion?

3 THE DEFENDANT: Carrion, yes, your Honor.

4 THE COURT: You have the right to be charged
5 by a grand jury. What that means is that the U.S.
6 attorney's office would have the right -- would have to
7 go before a grand jury and present a case. A grand
8 jury, consisting of a group of citizens from the
9 community, would have to find that there was probable
10 cause to proceed against you.

11 If you want to proceed today on an
12 information, what you're doing is you're waiving that
13 right and letting the government present a charging
14 instrument without going before the grand jury.
15 Understand that if the grand jury considered it, they
16 might return an indictment, they might not.

17 Do you have any objection to proceeding in
18 that manner?

19 THE DEFENDANT: No.

20 THE COURT: Okay. So you're going to waive
21 your right to an indictment and you want to proceed by
22 information; is that right?

23 THE DEFENDANT: Yes.

24 THE COURT: Very good. I have here a form
25 here called a waiver of indictment.

1 And that's your signature on this, I think?

2 Yes? You signed this waiver of indictment?

3 THE DEFENDANT: I did, your Honor, yes.

4 THE COURT: Very good. I'll enter that as
5 well.

6 So, Ms. Carrion, before accepting a guilty
7 plea, there are a number of questions I must ask you,
8 to assure that it's a valid plea. If you don't
9 understand any of my questions, please say so and I'll
10 reword or rephrase the question.

11 Counsel, any objection to putting your
12 client under oath?

13 MR. BRODERICK: No, no objection, your
14 Honor.

15 THE COURT: Could you administer the oath to
16 the defendant?

17 (Defendant is sworn.)

18 THE COURT: Do you understand, Ms. Carrion,
19 that having been sworn, your answers to my questions
20 will be subject to the penalties of perjury or of
21 making a false statement if you do not answer
22 truthfully?

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: So understand that that's a

1 separate problem from what we're talking about today,
2 so we don't want to have that problem, okay?

3 THE DEFENDANT: Yes.

4 THE COURT: All right, good. Just state
5 your full name for the record.

6 THE DEFENDANT: Meryl Gayle Carrion.

7 THE COURT: Very good. How old are you, Ms.
8 Carrion?

9 THE DEFENDANT: 55.

10 THE COURT: And how far did you go in
11 school?

12 THE DEFENDANT: One year of college.

13 THE COURT: Are you presently or have you
14 recently been under the care of a physician or
15 psychiatrist?

16 THE DEFENDANT: No.

17 THE COURT: In the past 24 hours, have you
18 taken any narcotic drugs, medicines or pills or drank -
19 - consumed any alcoholic beverages?

20 THE DEFENDANT: I've taken medication.

21 THE COURT: Okay. What kind of medication
22 is that?

23 THE DEFENDANT: I took anti-anxiety
24 medicine, Zoloft, and Benydril.

25 THE COURT: Okay, when did you take that?

1 THE DEFENDANT: Last night.

2 THE COURT: All right. Does that affect
3 your ability to understand or to think or to
4 communicate?

5 THE DEFENDANT: No, not at all, no.

6 THE COURT: Is your mind clear today?

7 THE DEFENDANT: Yes, it is.

10 THE DEFENDANT: I do.

11 THE COURT: Have you been hospitalized or
12 treated for narcotics addiction?

13 THE DEFENDANT: No.

14 THE COURT: Your mind is clear and you do
15 understand everything I've said so far.

16 THE DEFENDANT: Yes, I understand
17 everything, yes.

18 THE COURT: Counsel, have you discussed the
19 matter with your client?

20 MB BRODERICK: Yes, I have, your Honor.

21 THE COURT: Does she understand that she
22 will be waiving by pleading guilty?

23 MR. BRODERICK: Yes, she has, Your Honor.

24 THE COURT: Is she capable of understanding
25 the nature of these proceedings?

1 MR. BRODERICK: Yes, she is.

2 THE COURT: Do you have any doubt as to the
3 competency of the defendant to plead guilty?

4 MR. BRODERICK: No doubt, your Honor.

5 THE COURT: Ms. Carrion, I'm going to come
6 back to you. You have the right to plead not guilty.

7 Do you understand that?

8 THE DEFENDANT: I do.

13 Do you understand that?

14 THE DEFENDANT: Yes, I do, your Honor.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: In the course of that trial,
25 witnesses for the government would have to come forward

1 to court and testify in your presence and in the
2 presence of your counsel, and your counsel would have
3 the right to cross-examine the witnesses for the
4 government and object to evidence offered by the
5 government, and to offer evidence on your behalf.

6 Do you understand all those things?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: At the trial, while you would
9 have the right to testify if you chose to do so, you
10 would not be required to do so. Under the Constitution
11 of the United States, you cannot be compelled to
12 incriminate yourself. If you decided not to testify,
13 the Court would instruct the jury that they could not
14 hold that against you.

15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If you plead guilty and I
18 recommend acceptance of the plea to Judge Hurley, who
19 presumably would then accept the plea, you'll be giving
20 up your constitutional rights to a trial and the other
21 rights that I just described.

22 Do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: There will be no further trial
25 of any kind and no right to appeal or collaterally

1 attack at any time the question of whether you're
2 guilty or not. A judgment of guilty will be entered on
3 the basis of your guilty plea, which judgment can never
4 be challenged. However, you may have the right to
5 appeal with respect to the sentence.

6 Do you understand that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: What is the waiver of appeal in
9 this case? I'll come back to this in more detail but
10 is there an appellate waiver?

11 MR. OTT: The waiver is six months, your
12 Honor.

13 THE COURT: Meaning that?

14 MR. OTT: If there's a sentence of six
15 months or below, the waiver of appeal --

16 THE COURT: Right, but she would maintain
17 her right to appeal a sentence of more than six months.

18 MR. OTT: That's right, six months and a day
19 and so on.

20 THE COURT: Ms. Carrion, if you plead
21 guilty, I'll have to ask you questions about what you
22 did, in order to satisfy myself that you are guilty of
23 the charges to which you seek to plead guilty, and you
24 will have to answer those questions and acknowledge
25 your guilt. Thus, you'll be giving up your right not

1 to incriminate yourself.

2 Do you understand that?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Are you willing to give up your
5 right to a trial and the other rights that I just
6 discussed?

7 THE DEFENDANT: Yes, I am.

8 THE COURT: I'm going to ask the government
9 attorney to summarize the plea agreement, please.

10 MR. OTT: Yes, your Honor. The agreement is
11 that the defendant will waive indictment and plead
12 guilty to the three counts contained in the
13 information, which have to do with the evasion of taxes
14 in the calendar years 2006, 2007 and 2008. In exchange
15 for that, all of the tax conduct for those years, the
16 government will not pursue. Also, the government will
17 not make a recommendation for upward departure or any
18 specific sentencing recommendation, other than to
19 concur that a guideline sentence, which we anticipate
20 will be zero to six months, should be imposed.

21 THE COURT: Very good.

22 Do you understand that to be the agreement
23 with the government?

24 THE DEFENDANT: Yes, I do, sir.

25 THE COURT: Counsel, would you also just

1 summarize the elements of the crime with which she's
2 been charged?

3 MR. OTT: Certainly, your Honor. The
4 elements are that there's an affirmative act
5 constituting an attempt to evade or defeat the tax or
6 payment thereof. This is, by the way, Title 26, United
7 States Code 7201.

8 The second main element is additional tax
9 due and owing.

10 The third is wilfulness, which is to say
11 that she -- the defendant knew that there was
12 additional tax due or owing and that she was making an
13 attempt to evade or defeat that.

14 The final element, which is sort of a
15 pseudo-element, is that by a preponderance of the
16 evidence, some of the acts occurred in the Eastern
17 District of New York.

18 THE COURT: Okay.

19 Ms. Carrion, do you understand those to be
20 the elements of the crime with which you are charged?

21 THE DEFENDANT: Yes, your Honor, I do.

22 THE COURT: The reason that's important is,
23 that's what the government would have to prove had you
24 gone to trial.

25 Do you understand that?

1 THE DEFENDANT: I do.

2 THE COURT: Have you discussed with your
3 attorney the charges in the information to which you
4 intend to plead guilty?

5 THE DEFENDANT: Yes, I have.

6 THE COURT: You understand those charge?

7 THE DEFENDANT: I do, your Honor.

13 MR. BRODERICK: Yes, we have.

14 THE DEFENDANT: Yes.

15 THE COURT: And you've had adequate time to
16 review everything.

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand the maximum
19 sentence and fine that Judge Hurley might impose in
20 this case?

21 | THE DEFENDANT: Yes, I do.

22 THE COURT: So you know then that the
23 maximum term of imprisonment is five years --

24 Is it five years for each count or five
25 years?

1 MR. OTT: It's five years per count, yes.

2 THE COURT: Each count, okay. Whether that
3 would be consecutive or not is the question, so it's
4 theoretically fifteen years for all three counts, the
5 maximum.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: There's no minimum term of
9 imprisonment. There's something called a supervised
10 release term, which is three years, which would follow
11 any term of imprisonment. What that is -- that's a
12 kind of probation.

13 Are you familiar with that?

14 THE DEFENDANT: Yes.

15 THE COURT: If you violated the terms of
16 supervised release, you could be sentenced for up to
17 another two years, without any credit for anything else
18 that happened in the past.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: You understand there's a maximum
22 fine of \$100,000.

23 I'm presuming that's per count?

24 MR. OTT: Yes, your Honor.

25 THE COURT: Okay. So there's a maximum fine

1 potentially of up to \$300,000.

2 Ms. Carrion, are you with me?

3 THE DEFENDANT: Yes, I am, I am.

4 THE COURT: Understand, I have to go through
5 this, ma'am.

6 THE DEFENDANT: I understand, yes.

7 THE COURT: You have to understand
8 everything that's possible, all right?

9 THE DEFENDANT: I understand.

10 THE COURT: Restaurant I believe has to be
11 ordered, in an amount that's going to be determined
12 later. I'm not quite sure how we're going to do that,
13 but you understand restitution, meaning pay back what
14 you owe.

15 THE DEFENDANT: Yes, I do, completely.

16 THE COURT: And there's a \$100 special
17 assessment which has to be paid.

18 And the cost of prosecution, Mr. Ott, is
19 that right?

20 MR. OTT: Yes, that's by statute, but we
21 don't anticipate asking for the costs of prosecution.

22 THE COURT: So it's \$100 special assessment
23 per count, I believe --

24 THE DEFENDANT: Okay.

25 THE COURT: -- that you're pleading to, so

1 that's \$300 you'd have to pay.

2 Do you understand that?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Has your attorney spoken to you
5 about something called the sentencing guidelines?

6 THE DEFENDANT: Yes, he has.

7 THE COURT: Okay. So you understand that
8 although they're not mandatory, meaning that the Court
9 doesn't have to follow them, the Court has to consider
10 them in sentencing you.

11 Do you understand that?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: The guideline range has been
14 estimated -- it's a base offense level of 10.

15 Mr. Ott, unless this is --

16 MR. BRODERICK: It's page 3, your Honor, on
17 top of the page there.

18 MR. OTT: It's zero to six months, your
19 Honor.

20 THE COURT: Right, right, but it's a base of
21 10 and there are no other adjustments, is that right?

22 MR. OTT: That's right.

23 THE COURT: Okay.

24 So there's an estimate which -- understand,
25 the estimate is just everyone's best shot at this,

1 right? The Court is not bound by it but there's an
2 estimate that the guidelines is going to say zero to
3 six months.

4 THE DEFENDANT: I do.

5 THE COURT: You understand that. And Judge
6 Hurley would have to consider that. But, again, he's
7 not bound by it. He can go higher, he theoretically
8 could go lower, but zero to six months is really --

9 THE DEFENDANT: I understand.

10 THE COURT: You understand that the district
11 court must take a number of factors into account in
12 determining the appropriate guideline range, including
13 the nature and circumstances of the offense, the
14 history and characteristics of the defendant, that's
15 you, the seriousness of the offense, the victims of the
16 offense and your acceptance of responsibility.

17 You understand all that, correct?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Based on that, Judge Hurley will
20 make his own guidelines calculation as well.

21 Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: You understand that the
24 estimates are not binding on the Court at all.

25 THE DEFENDANT: Yes, I understand.

1 THE COURT: You also realize that if the
2 sentence is more severe than what you expect, you will
3 be bound by your guilty plea and you will not be
4 permitted to withdraw it.

5 THE DEFENDANT: I do understand.

6 THE COURT: Do you have any questions about
7 the charges, your rights or anything else relating to
8 this matter before we proceed to --

9 THE DEFENDANT: No, sir.

10 THE COURT: So you're ready to plead?

11 THE DEFENDANT: I am, your Honor.

12 THE COURT: Counsel, do you know of any
13 legal reason why the defendant should not plead guilty?

14 MR. BRODERICK: No, I know no reason.

15 THE COURT: Ms. Carrion, are you satisfied
16 with your legal representation up to this point?

17 THE DEFENDANT: Yes, I am.

18 THE COURT: What is your plea?

19 THE DEFENDANT: My plea is guilty, your
20 Honor.

21 THE COURT: Are you making this plea of
22 guilty voluntarily and of your own free will?

23 THE DEFENDANT: Yes, I am.

24 THE COURT: Has anyone threatened or forced
25 you to plead guilty?

1 THE DEFENDANT: No, sir.

2 THE COURT: Other than the agreement with
3 the government as stated on the record, has anyone made
4 any promises that caused you to plead guilty?

5 THE DEFENDANT: No.

10 THE DEFENDANT: No.

11 THE COURT: Did you, as charged in the
12 information, in or around April 15th of 2007, 2008 and
13 2009, knowingly and willingly attempt to evade and
14 defeat substantial income tax due and owing to the
15 United States of America? Did you do that?

16 THE DEFENDANT: Yes, sir.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Tell me in your own words what
23 you did.

24 THE DEFENDANT: For the three years, I did
25 not report the accurate amount of income that I made to

1 the IRS on my taxes.

2 THE COURT: Okay. How so?

3 THE DEFENDANT: I reported less than I was
4 actually taking in for income.

5 THE COURT: Okay. How much less?

6 THE DEFENDANT: It was about approximately
7 \$11,000.

8 THE COURT: All total for the three years?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you do that -- where were
11 you when you did that?

12 THE DEFENDANT: Where was I?

13 THE COURT: In other words --

14 THE DEFENDANT: While I was working for
15 Apple Builders Corporation.

16 THE COURT: Is that on Long Island?

17 THE DEFENDANT: No, it's in Queens.

18 THE COURT: Okay, so it was in Queens.

19 THE DEFENDANT: Oh, that's Long Island,
20 okay.

21 THE COURT: Where did you live at the time?

22 THE DEFENDANT: In Queens.

23 THE COURT: In Queens, okay.

24 Where did you mail the returns to, if I
25 remember?

1 THE DEFENDANT: I'm sorry?

2 THE COURT: Where did you mail the returns
3 to, do you remember?

4 THE DEFENDANT: Whatever the address is,
5 Holtsville.

6 THE COURT: I was just trying to establish
7 that it happened here.

8 THE DEFENDANT: Yeah.

12 MR. OTT: For the Eastern District, that's
13 correct.

18 MR. OTT: It is, your Honor.

19 THE COURT: Okay. So why don't you outline
20 the government's proof, should this have proceeded to
21 trial?

22 MR. OTT: That's right, your Honor. Through
23 bank records and also testimony, we would outline what
24 Ms. Carrion actually earned during those years. We
25 would also endeavor to show the tax returns and show

1 that the numbers reported there don't match up to the
2 actual income coming in. Through that, we would show
3 that she wilfully misreported her income.

4 THE COURT: You raised another good
5 question.

6 Ms. Carrion, I want to double check. When
7 you filed those false -- those tax returns that were
8 incorrect, did you know at the time you were filing
9 them that they were wrong?

10 THE DEFENDANT: I did, your Honor.

11 THE COURT: Okay. And your reason for doing
12 that was to not pay the taxes, is that fair?

13 THE DEFENDANT: That would be fair, yes,
14 sir.

15 THE COURT: Is there something else?

16 THE DEFENDANT: No, no.

17 THE COURT: Okay.

18 THE DEFENDANT: No, sir.

19 THE COURT: Based on the information
20 provided to me, I find that the defendant is acting
21 voluntarily, fully understands her rights and the
22 consequences of her plea, and that there is a factual
23 basis for the plea. I therefore recommend that Judge
24 Hurley accept the plea of guilty to Counts 1 through 3
25 of the information.

1 Mr. Ott, how are we doing as to bail
2 arrangements?

3 MR. OTT: Your Honor, we've reached an
4 agreement for a personal recognizance bond for Ms.
5 Carrion. Other than the standard restrictions, the
6 government and defense don't feel that any other
7 restrictions are necessary.

8 THE COURT: Okay.

9 So, Ms. Carrion, we're talking about your
10 release, meaning remaining out of prison pending
11 sentencing, right?

12 THE DEFENDANT: Yes.

13 THE COURT: I've been handed a personal
14 recognizance bond, which is this document, which I
15 believe also has your signature. I don't know if you
16 can see from there.

17 THE DEFENDANT: Yes. Yes, I did sign it.

18 THE COURT: The only restrictions here of
19 note that I see -- well, there are a number of
20 restrictions in here but the one that I should discuss
21 with you is, do you have a passport?

22 THE DEFENDANT: I do.

23 THE COURT: Okay. You're to surrender that
24 by July 27th.

25 THE DEFENDANT: Okay.

1 THE COURT: And you're not to apply for any
2 additional passports. You understand that, right?

3 THE DEFENDANT: Mm-hmm.

4 THE COURT: The other important thing about
5 being out on bond is that you show up for court when
6 your lawyer tells you to, okay.

7 THE DEFENDANT: Absolutely, yes.

8 THE COURT: It's very important. Failure to
9 do so is a separate crime called bail jumping. Mr. Ott
10 gets a very easy job because the proof is easy, you're
11 just not here, that's it. So let's not cause any other
12 problems. Make sure you stay in touch with your
13 lawyer.

14 THE DEFENDANT: I will.

15 THE COURT: Work with Pretrial Services or
16 Probation, whatever they need. Just be where you're
17 supposed to be when you're supposed to be, okay?

18 THE DEFENDANT: I will, your Honor.

19 THE COURT: With that, I'm going to sign the
20 personal recognizance bond and date it today, which is
21 the 13th. Very good.

22 Anything else I need to do? Let me start
23 with the government.

24 MR. OTT: I don't think so, your Honor, no.

25 THE COURT: Anything else I can do for the

1 defendant today?

2 MR. BRODERICK: No, your Honor.

3 THE DEFENDANT: No, thank you, your Honor.

4 THE COURT: All right, we're adjourned.

5 MR. OTT: Thank you.

6 MR. BRODERICK: Your Honor, I think they're
7 supposed to report to Probation today, though? Is that
8 what she should do?

9 THE COURT: Mr. Ott would know better than
10 I.

11 MR. BRODERICK: Thank you, your Honor, for
12 taking us again today. We really do appreciate this.

13 THE COURT: No problem.

14 THE DEFENDANT: Thank you, your Honor.

15 THE COURT: Happy to help. Good luck.

16 THE DEFENDANT: Thank you, sir.

17 (Tape off, tape on.)

18 MR. BRODERICK: Your Honor, I think we had a
19 conference at the bar and the Court wanted to ask one
20 more question.

21 THE COURT: Yeah, I just want to ask one
22 more question, ma'am. Step up to the mic, if you
23 would. Just right there. Have a seat, relax. It's
24 not a problem. I might have mis-head you, I'm just not
25 sure.

1 When you said to me that you had mis-
2 reported your taxes by \$11,000, you were referring to
3 the amount of tax due, is that right?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay, as compared to the amount
6 of income due, which was actually a larger -- that was
7 a larger number, right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: I'm looking at this and it looks
10 more like -- it's a significantly larger number of
11 income, right? Is that fair?

12 THE DEFENDANT: It is. The income is more.

13 THE COURT: The gross income.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right, that was my -- I
16 didn't --

17 THE DEFENDANT: No, I understand.

18 THE COURT: I wasn't sure, so thank you.

19 THE DEFENDANT: Okay, you're welcome. Thank
20 you, sir.

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I certify that the foregoing is a correct
transcript from the electronic sound recording of the
proceedings in the above-entitled matter.



ELIZABETH BARRON

August 22, 2012